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*Attorneys for Plaintiff,
Julius Bryant*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JULIUS BRYANT,

Plaintiff,

v.

WAG LABS, INC.,

Defendant

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE TELEPHONE CONSUMER
PROTECTION ACT AND TEXAS
BUSINESS & COMMERCE CODE**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, Julius Bryant (“Bryant”), through his counsel, and for his
Complaint against Defendant WAG Labs, Inc. (“WAG”) states:

INTRODUCTION

1. Plaintiff brings this complaint for Defendant’s violations of the Telephone
Consumer Protection Act (TCPA), 47 U.S.C. §227, *et seq.* and sections § 305.053 and § 302.101
of the Texas Business & Commercial Code.

PARTIES

2. Bryant is a natural person who, at all times relevant to this Complaint, resided in
Arlington, Texas.

1 that a dog walker was already in their neighborhood walking other dogs, and offering discounts for
2 their services.

3 17. The Defendant's texts, as alleged herein, constitute "telemarketing" within the
4 meaning of 47 C.F.R. § 64.1200(f)(13).

5 18. §302.101 of the Texas Business & Commerce Code prohibits sellers from engaging
6 in telephone solicitation from a location in this state or to a purchaser located in this state unless
7 the seller obtains a registration certificate from the Office of the Secretary of State for the business
8 location from which the solicitation is made.

9 19. Defendants are not registered with the Office of the Secretary of State. See
10 <https://direct.sos.state.tx.us/telephone/TelephoneSearch.asp>.

11
12 **FIRST CAUSE OF ACTION**
Violations of the TCPA, U.S.C. 227(b)(1)(A)

13 20. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
14 herein.

15 21. It is a violation of the TCPA to make "any call (other than a call made for emergency
16 purposes or made with the prior express consent of the called party) using any automatic telephone
17 dialing system ... to any telephone number assigned to a ... cellular telephone service" 47
18 U.S.C. § 227(b)(1)(A)(iii).

19 22. Defendant – or third parties directed by Defendant – used equipment having the
20 capacity to dial numbers without human intervention to make non-emergency telephone calls to the
21 cellular telephone of Plaintiff.

22 23. These calls were made without regard to whether Defendant had first obtained
23 express permission from the called party to make such calls. In fact, Defendant did not have prior
24 express consent to call the cell phones of Plaintiff when the texts were sent.

25 24. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by using an
26 automatic telephone dialing system and/or prerecorded text messages to make non-emergency
27 telephone calls to the cell phones of Plaintiff without their prior express written consent.
28

1 25. Defendant knew that it did not have prior express consent to make these calls, and
2 knew or should have known that it was using equipment that at constituted an automatic telephone
3 dialing system and/or prerecorded text message. The violations were therefore willful or knowing.

4 26. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the TCPA,
5 Plaintiff was harmed and is entitled to a minimum of \$500.00 in damages for each violation.

6
7 **SECOND CAUSE OF ACTION**
8 **Violations of the TCPA, U.S.C. 227(b)(1)(C)**

9 27. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
10 herein.

11 28. It is a violation of the TCPA "to use ... [a] device to send ... an unsolicited
12 advertisement" 47 U.S.C. § 227(b)(1)(C).

13 29. The term unsolicited advertisement means "any material advertising the commercial
14 availability or quality of any property, goods, or services which is transmitted to any person without
15 that person's prior express invitation or permission, in writing or otherwise." 47 U.S.C. § 227(a)(5).

16 30. Defendant sent Plaintiff unsolicited advertisements for dog walking services.

17 31. These messages were sent without Plaintiff's prior express consent.

18 32. Thus, Defendant has violated § 227(b)(1)(C) of the TCPA by using by sending
19 unsolicited messages to Plaintiff without their prior express written consent.

20 33. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the TCPA,
21 Plaintiff was harmed and is entitled to a minimum of \$500.00 in damages for each violation.

22 **THIRD CAUSE OF ACTION**
23 **Violations of Tex. Bus. & Com. Code § 305.053**

24 34. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
25 herein.

26 35. Defendant placed telemarketing texts to Plaintiff's telephone number.

27 36. Each of these texts violated 47 U.S.C. § 227.

28 37. Plaintiff is entitled to: (a) a permanent injunction to prevent any further violations
of the Texas Business & Commerce Code, Chapter 305; (b). the greater of \$500 for each violation

1 or Plaintiff's actual damages (see Tex. Bus. & Com. Code §304.053(b); (c) the greater of \$1,500
2 for each violation or Plaintiff's actual damages for each call made knowingly or intentionally (see
3 Tex. Bus. & Com. Code §304.053(c).

4
5 **FOURTH CAUSE OF ACTION**
6 **Violations of Tex. Bus. & Com. Code § 302.101**

7 38. Plaintiff incorporates by reference the foregoing allegations as if fully set forth
8 herein.

9 39. Plaintiff is a "consumer" as defined by § 301.001(2) of the Texas Business and
10 Commerce Code.

11 40. Defendant is a "telephone solicitor" as defined by § 301.001(5) of the Texas
12 Business & Commerce Code.

13 41. §302.101 of the Texas Business & Commerce Code prohibits sellers from engaging
14 in telephone solicitation from a location in this state or to a purchaser located in this state unless
15 the seller obtains a registration certificate from the Office of the Secretary of State for the business
16 location from which the solicitation is made.

17 42. Defendants violated § 302.101 of the Texas Business & Commercial Code when
18 their representatives engaged in continuous and repetitive telephone solicitation of Plaintiff without
19 obtaining a registration certificate from the Office of the Secretary of State.

20 43. §302.302(a) of the Texas Business & Commerce Code provides that a person who
21 violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
22 Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover all
23 reasonable cost of prosecuting the action, including court costs and investigation costs, deposition
24 expenses, witness fees, and attorney fees.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiffs, individually and on behalf of their proposed Classes, pray for the
27 following relief:

28 A. An order declaring that Defendants' actions, as set out above, violate 47 U.S.C.

1 §227(b);

2 B. An award of statutory damages;

3 C. An award of treble damages; and

4 D. Such other and further relief that the Court deems reasonable and just.

5 **JURY TRIAL DEMAND**

6 Plaintiff demand trial by jury on all issues so triable.

7 **GINSBURG LAW GROUP, P.C.**

8 *Attorneys for Plaintiff,*

9 *Julius Bryant*

10 Dated: February 17, 2023

11 By: s/ Amy L. B. Ginsburg

12 AMY L. B. GINSBURG